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IN THE SUPREME COURT OF FIJI  
Civil Jurisdiction  
ACTION NO. 44 OF 1984

Between:

VELSON SERVICE STATION

PLAINTIFF

- and -

PREM CHAND s/o Bhagi Rathi  
trading as AEROCEAN CLEARANCES

DEFENDANT

Mr. H.M. Patel for the plaintiff.

Mr. A.K. Singh for the defendant.

J U D G M E N T

The plaintiff pursuant to Order 14 Rule 1 Rules of the Supreme Court seeks summary judgment against the defendant for the sum of \$12,000 being the total sum alleged to be due and owing by the defendant to the plaintiff in respect of nine cheques drawn by the defendant in favour of the plaintiff on the Bank of Baroda which on presentation to the Bank were dishonoured.

The defendant entered An Appearance to the Writ and filed a Statement of Defence after the present application was filed but before the date for hearing.

A number of affidavits have been filed by the parties.

The defendant in his first affidavit in reply admitted writing the nine cheques totalling the sum of \$12,000 and admitted that they were dishonoured on presentation to the Bank of Baroda. He did not deny the

plaintiff's allegation that the defendant was notified that the cheques had been dishonoured. He alleges that he paid the plaintiff the sum of \$12,000 by one cheque for \$6,000 on or about 5th September, 1983, and having obtained forbearance from the plaintiff for payment of the balance he gave the plaintiff eight postdated cheques totalling \$6,000. All the cheques he alleges were paid on presentation to the Bank. He further alleges that the plaintiff has claimed an amount of \$11,899.57 from Aerocean Limited, of which company he is Managing Director, which account is disputed by that company. He alleges in addition that he is not personally liable on the cheques and that the claim should be made on Aerocean Limited.

The Defence which was filed without leave on the day the defendant filed his affidavit in reply, is a repetition of the defence disclosed in his affidavit.

Mr. K. Velji, the Proprietor of Velson Service Station in a further affidavit filed in answer to the defendant's affidavit annexed to his affidavit a detailed analysis of the accounts between the parties covering the period March 1 1983, to January 1 1984, showing a debit balance of \$12,000.

That analysis discloses that nine cheques totalling \$12,000 given to the plaintiff in September and October 1983 have been credited to the defendant's account. The analysis also discloses eight further cheques each for \$500 paid by or on account of the defendant in November and December 1983 which the defendant did not disclose in his affidavit.

In his further affidavit in reply to Mr. Velji's second affidavit the defendant makes no mention of the credits and debits in analysis except to "vehemently dispute" the matters deposed to by Mr. Velji and to state it was incorrect. He annexed to his affidavit statements rendered by the plaintiff for the months of August to November both months inclusive.

Those statements indicate that for period 1st to 29th August 1983 statements were rendered in the name of Aerocean Clearances (the firm) at the end of which period there was a debit balance of \$15,081.58.

That balance was carried forward in the next statement which was rendered in the name of Aerocean Limited indicating that the defendant had incorporated his business. All the other statements were in the name of the incorporated company.

Mr. Velji in his third affidavit explained that statements rendered in the name of Aerocean Limited was an error contributed to by the fact that the defendant sometimes paid by issuing a company cheque. He annexed to the affidavit a copy of the December 1983 account which was rendered in the name of the firm Aerocean Clearances showing a debit balance of \$12,000.

Mr. Singh referred to the case of Paclantic Financing Co. Inc. & Others v. Moscow Narodny Bank Ltd. /1983/ 1 W.L.R. 1063 a decision of a court of first instance. At page 1065 Webster J. stated the principles to be followed :

" I treat the following propositions as the non contentious background to the particular question which I have to consider. They are: that summary judgment should not be given where there is a bona fide defence (i.e., an issue or question in dispute which ought to be tried) or where there ought for some other reason to be a trial; that on an application for summary judgment disputes of fact should not be decided, serious questions should not be determined in a summary manner and issues should not be tried; and that a defendant seeking to resist summary judgment should state clearly and concisely what his defence is and what facts are relied upon as supporting it. "

Webster J. concluded at page 1067 :

" But I conclude that I should not reject the defendant's evidence if, merely because of its inherent implausibility or its inconsistency with other evidence, I find it incredible or almost incredible. "

The learned Judge in that case found there was one issue which was arguable and one other "very faintly arguable". It is clear that the Judge was not happy with the defence and contemplated giving conditional leave to defend which could have involved payment into Court of the amount of the claim.

The learned Judge was not referred to Jessel M.R.'s remarks in the Court of Appeal in Anglo-Italian Bank v. Wells 38 L.T.P. 197 C.A. Although this was an 1878 case it is still good law and is referred to in the Notes to Order 14 Rules of the Supreme Court.

Jessel M.R. at p. 199 said :

"Now, the order on which the decision is made is a most useful order. It is intended to prevent a man clearly entitled to money, from being delayed where there is no fairly arguable defence to be brought forward".

Jessel M.R. also said at p. 200 - 201.

"I entirely agree with the Vice Chancellor, that when the Judge is satisfied not only that there is no defence, but no fairly arguable point to be argued on behalf of the defendant, it is his duty to give effect to this section and to give judgment".

Applying the principles enunciated by Webster J. there is in my view no defence to the plaintiff's case. The defendant admitted writing the cheques and that they were dishonoured. He has alleged payment and has listed nine other cheques which total the sum claimed which were paid to the plaintiff. Those cheques have been accounted for by the plaintiff.

The statements on which the defendant himself relies show that the defendant in his personal capacity owed the plaintiff the sum of \$15,081.58 as at the 29th August, 1983.

The nine cheques given to the plaintiff in July and August 1983 were presented to the Bank on 15th

September, 1983, but not returned dishonoured until 25th November, 1983, for lack of funds with the reason "Exceeds Arrangements".

The defendant alleges that the incorporated company is liable. He has not pleaded any assignment of the debt or novation of the contractual debt or that he is entitled to be indemnified by the company.

Had he claimed to be entitled to an indemnity that would not avail him unless he could establish that the company had discharged the plaintiff's claim (Thorne v. Steel /18787 W.N. 215 C.A.).

The defendant stated that he gave 8 post dated cheques which total \$6,000. On his own statement eight of the nine cheques were paid before the cheques on which the plaintiff has sued were dishonoured by the Bank. His affidavit would have the Court believe that after dishonour of the cheques he gave further cheques post dated.

I am satisfied that the defendant has no defence to the plaintiff's claim.

There will be judgment for the plaintiff for the sum of \$12,000 and costs.

*R. G. Kermod*

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J U D G E

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